
Judiciary Committee

HB 1178

Title: An act relating to ensuring the rights of parents to monitor the communications and conversations of their minor children.

Brief Description: Ensuring the rights of parents to monitor the communications and conversations of their minor children.

Sponsors: Representatives McDonald, Dickerson, Rodne, Kagi, Priest, Ahern, Pearson, Campbell, McCune, Kristiansen, Moeller, Dunn, Nixon, Darneille, Shabro, Schual-Berke, Roach, Strow, O'Brien, Condotta and Holmquist.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides an exception to the Privacy Act to allow a parent to intercept certain communications involving an unemancipated minor child of the parent;• Prevents any evidence obtained through such an interception from being admitted in evidence in any court if the interception was done at the unauthorized request of a law enforcement officer.
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Hearing Date: 2/2/05

Staff: Bill Perry (786-7123).

Background:

The Privacy Act restricts the interception or recording of private communications or conversations. As a general rule, it is unlawful for any person to intercept or record any private communication or conversation without first obtaining the consent of all persons participating. There are some exceptions to this general rule. For instance, wire communications or conversations of an emergency nature that convey threats of extortion, blackmail, or bodily harm, or that occur anonymously, repeatedly, or at an extremely inconvenient hour may be recorded or intercepted with the consent of only one party.

The Privacy Act also expressly prohibits a person from opening or reading another's mail or telegram when knowing that he or she is doing so without authority.

A court may order the interception of a communication without the consent of any of the parties to the communication if the national security or a human life is endangered, or if an arson or riot is about to occur and there are no other means readily available for obtaining the information.

Information obtained in this manner is generally inadmissible as evidence in a court except in cases of national security.

Under some circumstances, law enforcement personnel may intercept, transmit, or record a private communication or conversation with the consent of only one party if there is probable cause to believe the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession of controlled substances. Evidence obtained in this manner is admissible only in prosecuting some drug offenses and in a few other limited circumstances.

Violations of the Privacy Act are generally gross misdemeanors. Violations are also subject to civil suits in which a person whose rights under the act have been violated may recover actual damages, or liquidated damages of up to \$1,000, and reasonable attorney fees.

A recent decision of the Washington State Supreme Court held that evidence obtained through a parent's interception of her minor child's phone conversation was not admissible in a criminal prosecution of the other party to the phone conversation. (*State v. Christensen*, docket number 74839-0, filed 12/09/05.) In its decision, the court rejected the argument that the Privacy Act has an implied exception for the conversations of minor children who should be seen as having a reduced expectation of privacy. Furthermore, the court noted that it was not the privacy of the daughter that was at issue, but rather the privacy of the defendant who was on the other end of the phone conversation.

Summary of Bill:

A legislative finding is made that parental rights and responsibilities include monitoring the communications and conversations of minor unemancipated children to prevent them from being drawn into delinquent, criminal, or other behavior that the parents may oppose or may have concerns about.

The Privacy Act is amended to exempt a parental interception of an unemancipated minor child's communication or conversation. The exemption applies to the general prohibition against interception of a communication or conversation without the consent of all parties and also applies to the explicit prohibition against opening or reading another's mail.

The parental interception exception applies to communications or conversations and to mail within a residence. The exception applies when the interception is done by a "resident parent" with respect to any communication or conversation to which the unemancipated minor child is a party and with respect to any mail intended for the minor. A "resident parent" is an adult person who has the legal authority or duty to provide custody, control, shelter, or care for the minor and who is an occupant of the residence in which the communication or conversation occurs or to which the mail is delivered.

Evidence obtained from such a parental interception is inadmissible in a civil or criminal case if the interception was done at the unauthorized request of a law enforcement officer.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.